

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3729 OF 2007

Dr.Khodu S.Irani ...Petitioner

V/s.

Jehangir Dinshaw Irani & Anr. ...Respondent

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Mr.R.G.Ketkar for Petitioner.

Mr.J.S.Kini i/b Mr.Suresh Dubey for Respondent.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 23, 2007.

P.C.

1. Heard Counsel for the parties.

2. This Writ Petition takes exception to the Judgment and Order passed by the Ad-hoc District Judge - 7, Pune dated 15th February 2007 rejecting the application for condonation of delay in filing appeal. The delay was of about 66 days.

3. For considering the question: whether the Petitioner made out sufficient cause for condoning

delay, we will straightaway advert to the averments in Paragraphs 6 and 7 of the application for condonation of delay, which read thus:

"6. The applicant submits that the applicant learnt about the judgement and decree passed in Regular Civil Suit No.544 of 1999 on or about 20.7.2005. The applicant thereafter immediately made an application for certified copy of the said judgment and decree on 21.7.2005. The certified copies were ready on 28.7.2005.

7. In the aforesaid circumstances, if counted from the date of judgment and decree, there is a delay of 66 days in filing the present appeal. It is submitted that the applicant herein was not aware of the said judgment and decree and therefore he could not make any application for certified copies before 21.7.2005."

4. From the material on record, it is evident that the Petitioner became aware about the Judgment and Decree dated 25th April 2005 for the first time on 20th July 2005. Even if that statement is accepted as it is, the question is: whether there is sufficient cause which prevented the Petitioner to file Appeal within the reasonable time, much less, within limitation after acquiring knowledge about the impugned decree. The Petitioner claims

to have learnt about such decree on 20th July 2005. Immediately on the next date, Petitioner applied for certified copy of the said decree on 21st July 2005. It is also seen that the certified copy was made ready on 28th July 2005. However, what prevented the Petitioner to file appeal from 28th July 2007 till 8th September 2005 is not explained at all in the application filed before the lower Court.

5. Thus understood, no fault can be found with the conclusion reached by the lower Appellate Court that the Petitioner failed to make out sufficient cause for filing of the Appeal in time. The lower Court has assigned other reasons for reaching at that conclusion. Nevertheless, in my opinion, no case is made out for interference in exercise of writ jurisdiction. Hence, dismissed.

A.M.KHANWILKAR, J.